Filed 12/4/08 Sole Energy v. Hodges CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SOLE ENERGY COMPANY et al.,	
Plaintiffs and Appellants,	G039197
v.	(Super. Ct. No. 00CC06333)
MORRIS V. HODGES et al.,	O P I N I O N
Defendants and Respondents.	

Appeal from a judgment of the Superior Court of Orange County, Hugh Michael Brenner, Judge. Affirmed. Request for judicial notice. Granted.

Hornberger & Brewer, Nicholas W. Hornberger and Jason H. Gorowitz for Plaintiffs and Appellants.

Brady, Vorwerck, Ryder & Caspino and Ravi Sudan for Defendants and Respondents Morris V. Hodges, Kaymor Petroleum Products and Hillcrest Beverly Oil Corporation.

Law Offices of Norman Rasmussen, Norman Rasmussen; Law Offices of Mark B. Simpkins and Mark B. Simpkins for Defendant and Respondent Nevadacor Energy, Inc.

* * *

INTRODUCTION

This is the seventh appeal arising out of the underlying lawsuit, *Sole Energy Company v. Petrominerals Corporation*, Orange County Superior Court case No. 00CC06333.[1] In this appeal, appellants challenge the judgment entered after the trial court granted defendants' motion for summary judgment.

Appellants are Sole Energy Company, a Texas corporation, Sole Energy Company (a limited liability company that was never formed), Thomas R. Swaney, Richard F. Borghese, and Harwood Capital Corporation (Harwood.) Appellants were the plaintiffs in the trial court, and here we refer to them collectively as Plaintiffs. We refer to Sole Energy Company (the Texas corporation) as Sole Energy Corporation to maintain consistency with prior opinions and to distinguish it from the never-formed limited liability company also called Sole Energy Company, which we will refer to as Sole Energy LLC.

Respondents are Morris V. Hodges, Kaymor Petroleum Products (Kaymor), Hillcrest Beverly Oil Corporation (HBOC), and Nevadacor Energy, Inc. (Nevadacor). Hodges, Kaymor, HBOC, and Nevadacor were defendants in the trial court, and here we refer to them collectively as Defendants.

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[1] *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187 (*Sole Energy I*); *Sole Energy Co. v. Hodges* (2005) 128 Cal.App.4th 199 (*Sole Energy II*); *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212 (*Sole Energy III*); *Sole Energy Co. v. Petrominerals Corp.* (Apr. 5, 2005, G032255) [nonpub. opn.] (*Sole Energy IV*); *Sole Energy Co. v. Petrominerals Corp.* (Dec. 21, 2006, G036611) [nonpub. opn.] (*Sole Energy V*); and *Sole Energy Co. v. Petrominerals Corp.* (Dec. 4, 2008, G039034) [nonpub. opn.] (*Sole Energy VI*).

Plaintiffs' second amended complaint, filed after remand from *Sole Energy III*, asserted causes of action against Defendants for fraud and breach of contract. The trial court granted Defendants motion for summary judgment, and Plaintiffs' appeal is from the subsequently entered judgment.

Although the parties address a number of issues in their appellate briefs, the issues of causation and damages are dispositive. Defendants argue summary judgment was correct because there is a lack of causal connection between the alleged fraud and breaches of contract on the one hand, and damages on the other. Defendants also argue the lost profit damages sought by Plaintiffs are speculative. In neither the opening brief nor the reply brief do Plaintiffs cite to authority or evidence in the record to support their claim of damages. Plaintiffs do not mention breach of contract damages *at all* in either brief.

As appellants, Plaintiffs have the burden of proving error, and that burden includes the obligation to present argument and legal authority on each point raised. (E.g., *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134; *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 367-368.) We conclude Plaintiffs did not meet their burden as appellants on the issues of causation and damages; on that ground alone, we affirm.

FACTS

I. *The Parties*

Swaney is the sole shareholder and president of Harwood, a California corporation. Borghese is a petroleum engineer and has worked as a technical consultant.

Borghese and Harwood began an informal business partnership in April 1999 and started to use the name Sole Energy Company in about July of that year.

Sole Energy Corporation was incorporated in the State of Texas on December 30, 1999.

HBOC is a California corporation that owns and operates oil and gas wells in Los Angeles County under long-term leases. Kaymor owns a gas-processing plant abutting HBOC's wells. Hodges is an officer of both HBOC and Kaymor.

Nevadacor is a Nevada corporation. William Herder is it president and sole shareholder.

Petrominerals Corporation (Petrominerals) is a California corporation. Hodges owned shares of Petrominerals and was its president and chief executive officer.

II. *Initial Discussions Regarding the Acquisition of HBOC*

In May 1999, a broker named Bob Devine approached Swaney and asked him whether he was interested in oil and gas assets in California. Swaney expressed interest, and, in July 1999, Devine introduced Swaney and Borghese to Hodges, who was trying to sell HBOC. On July 2, 1999, Swaney and Hodges signed a confidentiality agreement regarding the potential sale of HBOC's stock.

Borghese and Swaney agreed to call their partnership "Sole Energy Company," created a logo and, in August 1999, had business cards and stationery printed with the name "Sole Energy Company, LLC." Sole Energy Company LLC never formally existed.

III. *Hodges's Statement That Petrominerals Was Not Interested in Acquiring HBOC*

On July 20, 1999, Borghese and Swaney met with Hodges to discuss the potential sale of HBOC. By then, Borghese and Swaney knew Hodges was the president and chief executive officer of Petrominerals, and a shareholder and officer of HBOC and Kaymor. According to Borghese, at the July 20 meeting, he asked Hodges, "'why isn't Petrominerals doing this HBOC deal?'" Hodges replied, "'it's too expensive and there's a conflict of interest in doing that kind of transaction.'" Borghese was "comfortable" with that answer. According to Swaney, Hodges said there was a conflict of interest and "Petrominerals cannot and will not pursue the acquisition of HBOC."

Hodges stated in a declaration submitted in support of the motion for summary judgment: "As a result of being an officer and director of Petrominerals, it was my opinion that I may have some conflict in dealing with Petrominerals for the sale of HBOC. I also felt that Petrominerals may not be able to meet the financial requirements to purchase HBOC. Therefore, I had a preference to sell HBOC to someone other than Petrominerals."

At the July 20, 1999 meeting, Hodges announced he had hired Daniel Silverman as a consultant to assist in negotiating the sale of HBOC. Soon thereafter, Borghese met with Silverman, who told Borghese he also worked as an independent consultant for Petrominerals. When Borghese mentioned a potential conflict of interest, Silverman told him, "'Petrominerals cannot do this deal. That's a conflict of interest.'"

However, in a letter to Hodges, dated August 11, 1999, Silverman wrote: "Not to belabor the point with Petrominerals, but I do think that it is possible for P[etrominerals] to purchase [HBOC] if I can go out and bring in some of that mezzanine financing to complete the drilling. . . . Let's talk more maybe next week after we smoke out Harwood and Rich [Borghese]'s abilities." According to HBOC's attorney, Michael Steele, "[t]he interest of Petrominerals in acquiring [HBOC] . . . never ceased."

IV. *The Letter of Intent*

On or near August 18, 1999, Borghese sent to Hodges by facsimile a nonbinding proposal for discussion purposes to purchase HBOC's assets for $7.5 million. The proposal was on stationery with Sole Energy LLC letterhead, and attached to it was Borghese's Sole Energy LLC business card. The letter listed five contingencies and stated: "This proposal is submitted for discussion purposes only and is non-binding. Unless and until all of the above contingencies have been fully satisfied, a binding agreement shall not have been created between [HBOC] and Sole."

On September 2, 1999, Borghese, on behalf of Sole Energy LLC, signed a proposed letter of intent to purchase HBOC's stock from Nevadacor for $7.5 million ($1 million note and $6.5 million cash). Herder had signed the proposed letter of intent on Nevadacor's behalf on September 1, 1999.

In November 1999, Sole Energy LLC notified Hodges it had obtained financing for the transaction. In a letter to Hodges, dated November 30, 1999, Borghese stated: "We are prepared to close the purchase of the stock of [HBOC]. [¶] . . . We have financing in place through Bank One as per the term sheet provided." The letter was on Sole Energy LLC letterhead stationery.

On December 16, 1999, Borghese submitted a letter of intent to Nevadacor. The letter of intent proposed an entity named Sole Energy Company would purchase HBOC's stock and oil- and gas-related assets from Nevadacor for $7.5 million. The letter was prepared on Sole Energy LLC letterhead stationery. Borghese signed the letter of intent on behalf of "Sole Energy Company" with no "LLC." The letter of intent stated: "Except as provided in sections 6 through 11, both inclusive, this letter shall represent a non-binding letter of intent between the parties. This letter of intent shall expire on December 17, 1999, 5:00 CST. Any party may terminate this letter of intent after January 31, 2000, upon written notice to the other parties, or at any time by all parties with their mutual written consent."

The letter of intent included a "no shop" provision by which HBOC, Kaymor, and Nevadacor agreed not to solicit or encourage, not to "initiate or participate in any negotiations or discussions regarding," and not to enter into or authorize "any agreement or agreement in principle with respect to, any expression of interest, offer, proposal to acquire or acquisition of either all or a substantial portion of HBOC's business or assets or any of its capital stock." The letter of intent also included a nondisclosure provision prohibiting the parties from disclosing the existence or terms of the letter of intent to any third party.

On December 23, 1999, Hodges signed the letter of intent on behalf of HBOC and Kaymor. On December 27, 1999, Herder signed the letter of intent on behalf of Nevadacor. Swaney and Borghese testified in their depositions that Sole Energy LLC transferred its rights under the letter of intent to Sole Energy Corporation after it was incorporated on December 30, 1999.

V. *Draft Stock Purchase Agreements*

On January 7, 2000, Texas attorneys representing Sole Energy LLC submitted a draft stock purchase agreement to HBOC, Nevadacor, and their attorneys. The draft stock purchase agreement identified the buyer as "Sole Energy Company, a Texas corporation." In a letter dated January 20, 2000, Nevadacor's counsel expressed disagreement with or objection to various terms in the draft stock purchase agreement, but did not mention that the buyer was identified as Sole Energy Company, a Texas corporation.

To finance the $7.5 million purchase price, Borghese and Swaney planned to obtain a loan of up to $6.5 million from Bank One and $1.1 million from other investors. Hodges proposed investing $550,000 in Sole Energy Company, a Texas corporation, on behalf of a group of investors, and a friend of Hodges also agreed to invest $100,000. On February 17, 2000, Bank One provided Borghese and Swaney a financing commitment of up to $6.9 million "to fund the acquisition of the California oil and gas projects we have reviewed and the expansion of your liquids plant."

On February 11, 2000, Texas attorneys representing Sole Energy Corporation submitted a second draft of the stock purchase agreement. This second draft identified the buyer as "Sole Energy Company, a Texas corporation." Nevadacor's attorney responded in a letter dated February 16, 2000, stating: "We received your draft of the Stock Purchase Agreement between Nevadacor Energy, Inc. and Sole Energy Company dated February 11, 2000 and have the following comments . . . . [¶] First,

apparently, you did not have a chance to see my letter of January 20 addressed to Paul Strohl since many of my comments were ignored. Those comments were not my hopes, they were deal points that must be addressed. I am enclosing another copy so that I won't have to repeat the same comments again."

Sole Energy Corporation's Texas counsel responded in a letter dated February 18, 2000, stating: "[T]he comments in your January 20 and February 16 letters with respect to an 'AS IS' deal are not acceptable to our client, are not the basis of the deal, and were not agreed to between our clients and Morris Hodges in the nearly six months of discussions they have had about this transaction." In this letter, counsel requested a $100,000 price adjustment for environmental remediation work based on the results of an environmental survey. The letter closed by stating: "[I]t seems to me our clients are at opposite ends of the spectrum on this transaction. I reiterate that our clients believe that they had worked things out with Mr. Hodges over the preceding months in line with my comments and drafts. I also note in recent correspondence between Mike Steele and Kevin Shaw, Sole's California counsel, Mike has stated that Kaymor/ Nevadacor 'will agree to any necessary indemnification' with respect to several title matters. If your clients have changed their minds and if the deal can only go forward on the basis of your comments, one of two things must happen—either there will be no transaction between the parties because of their failure to agree or our clients see the necessity for a very substantial reduction in the purchase price to reflect the increased risks they will have to take in the transaction, as well as increased due diligence costs and delay. Our clients have already expended a substantial amount of money in pursuing what they thought was the deal, as reflected in their discussions, and would like to make this happen, but only if it makes legal and economic sense."

On February 18, 2000, Borghese spoke by telephone with Hodges. When, according to Hodges, Borghese requested a $2 million price reduction, Hodges "terminated the conversation." In a letter to Hodges, dated March 4, 2000, Borghese

wrote: "In our last conversation of Friday February 18, I may have given you the impression that I was attempting to negotiate an adjustment to the purchase price of $2 million. As I recall, when I mentioned $2 million during the final part of that conversation, you had said that the discussion had just ended. I was not attempting to negotiate an adjustment to the purchase price of $2 million, rather, I was asking you to give representations and warranties limited to $2 million rather than the $7.5 [million] (purchase price) that was previously proposed in earlier drafts of the stock purchase agreement. I was not trying to change our deal. I was merely attempting to suggest an alternative to full representations and warranties, just as you did when you said that you were willing to pledge your stock. [¶] It would be very unfortunate for both of us to end our negotiations as a result of this miscommunication."

On February 23, 2000, Sole Energy Corporation's Texas counsel submitted a third draft of the stock purchase agreement. This draft also identified the buyer as Sole Energy Company, a Texas corporation. The purchase price of $7.5 million was deleted and a blank inserted in its place.

VI. *Termination of Letter of Intent*

In a letter dated February 25, 2000, Nevadacor and Kaymor terminated the negotiations and the letter of intent without stating reasons. Hodges authorized the termination.

In late February 2000, the chairman of Petrominerals's board of directors asked Hodges if Petrominerals should consider making an offer for HBOC. Hodges replied, "nothing can happen until after March 1st." In early March 2000, Petrominerals sent a letter to Nevadacor with an offer to purchase HBOC. On March 10, 2000, Petrominerals and Nevadacor entered into a nonbinding letter of intent, prepared by Silverman, to sell HBOC's stock to Petrominerals for $6.7 million and 200,000 shares of Petrominerals' stock. The Petrominerals/Nevadacor transaction was never consummated.

PROCEDURAL HISTORY

On May 25, 2000, Sole Energy Corporation filed a verified complaint alleging causes of action for intentional interference with contractual relations, intentional interference with prospective economic advantage, fraud, and breach of contract.[2] Defendants successfully moved for summary judgment on the ground Sole Energy Corporation had not been incorporated when the letter of intent was signed and therefore lacked standing to sue. (*Sole Energy III, supra,* 128 Cal.App.4th at p. 222.)

In September 2001, the trial court granted the motion for summary judgment, ruling that Sole Energy Corporation lacked standing to pursue the litigation. (*Sole Energy I, supra,* 128 Cal.App.4th at p. 191.) On September 19, 2001, the day on which judgment was entered, Sole Energy Corporation moved for reconsideration of the order granting summary judgment. (*Ibid.*) The trial court deemed the motion for reconsideration to be a motion for a new trial and granted it. (*Id.* at p. 192.) The order granting a new trial is the subject of our opinion in *Sole Energy I, supra,* 128 Cal.App.4th 187. In that case, we affirmed, holding (1) the trial court had discretion to treat the motion for reconsideration as a motion for a new trial, and (2) the trial court did not abuse its discretion in granting the motion for a new trial. (*Id.* at p. 190.) We declined to address whether Sole Energy Corporation has standing to assert the claims asserted in its complaint. (*Ibid.*)

Sole Energy Corporation also moved for leave to amend the complaint to add new plaintiffs with standing. (*Sole Energy III, supra,* 128 Cal.App.4th at p. 222.)

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[2] Defendants filed a request for judicial notice of (1) Sole Energy Corporation's verified complaint; (2) judgment pursuant to appellate court opinions, filed November 17, 2005; (3) order granting Daniel H. Silverman's motion for summary judgment against Sole Energy Corporation, filed June 4, 2007; (4) order granting Petrominerals Corporation's motion for summary judgment against Sole Energy Corporation, filed June 4, 2007; and (5) order granting Petrominerals Corporation's motion for summary judgment against Harwood Capital, Inc., filed December 12, 2007. We grant the request for judicial notice.

The trial court granted the motion, and a first amended complaint was filed December 6, 2001. (*Ibid.*) The first amended complaint added four new plaintiffs: Sole Energy Partnership, Swaney, Borghese, and Harwood. (*Ibid.*) The trial court stayed the case as to Sole Energy Corporation after Defendants appealed from the order granting the motion for reconsideration. (*Id.* at p. 223.) The case proceeded only on the claims of the newly added plaintiffs—Sole Energy Partnership, Swaney, Borghese, and Harwood—and was tried to a jury on their claims against Petrominerals and Silverman for interference with contractual relations, interference with prospective economic advantage, fraud, and conspiracy. (*Ibid.*) That trial and the posttrial motions were the subjects of *Sole Energy III* and *Sole Energy V*.

On October 27, 2005, Sole Energy Corporation filed a second amended complaint, the now operative complaint. The second amended complaint alleged causes of action for interference with contractual relations, interference with prospective economic advantage, fraud, breach of written contract, and breach of oral contract. The trial court overruled Defendants' demurrer to the fraud cause of action, but in so doing ordered, "the third cause of action for fraud . . . is limited to, and states sufficient facts as to, the alleged inducement of plaintiffs to enter into the December 16, 1999 letter of intent and to incur expenses on due diligence and other matters as a result."

Defendants moved for summary judgment on the ground Sole Energy Corporation lacked standing. In the alternative, Defendants moved for summary adjudication of the fraud and breach of written contract causes of action.

The trial court initially denied the motion for summary judgment on procedural grounds. The court later decided to hear the motion, and granted it at the end of the hearing on June 4, 2007. In an order entered on June 29, 2007, the court found (1) Sole Energy LLC was never formed as a limited liability company and therefore lacked the power or capacity to enter into the letter of intent; (2) as a result, the letter of intent was void *ab initio* and "neither Sole [Energy] Corporation, nor any other person or

entity, could be an assignee or successor to that Letter of Intent"; and (3) "there is no causal connection between the alleged breach and plaintiff Sole [Energy] Corporation's alleged damages," and "plaintiff Sole [Energy] Corporation cannot establish one or more elements of its fourth cause of action for breach of written contract, or that there is a complete defense to that cause of action."

As to the fraud cause of action, the trial court found: "There cannot be any justifiable reliance by plaintiffs on the alleged statements made in the course of negotiations or in an agreement for a future agreement. Further, plaintiffs' alleged reliance in the face of their understanding and acknowledgement set forth in section 6 of the July 2, 1999 Confidentiality Agreement that 'the sellers made no representation as to the accuracy or completeness of any information provided' was unreasonable and not justified."

On June 14, 2007, before the written order was entered, Plaintiffs moved for reconsideration of the order granting summary judgment. The trial court treated the motion for reconsideration as a motion for a new trial and denied it. Plaintiffs timely appealed from the judgment entered on June 29, 2007.

DISCUSSION

Plaintiffs argue the trial court erred in granting summary judgment because Borghese and Swaney had standing to assert the claims in the second amended complaint and because there are triable issues on each element of the fraud and breach of contract causes of action. Plaintiffs also argue the trial court erred in denying their motion for reconsideration. We limit our discussion, however, to the issues of causation and damages because they are dispositive of the appeal. As we explain, Plaintiffs did not, either in their appellate briefs or at oral argument, cite to any evidence in the record or legal authority supporting their claim of causation and damages and failed, therefore, to meet their burden as appellants to affirmatively demonstrate error.

I. *Legal Standards: The Appellant's Burden of Demonstrating Error*

"A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*In re Marriage of Arceneaux, supra*, 51 Cal.3d 1130, 1133.) "The burden of affirmatively demonstrating error is on the appellant. This is a general principle of appellate practice as well as an ingredient of the constitutional doctrine of reversible error." (*Fundamental Investment etc. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971, citing *Walling v. Kimball* (1941) 17 Cal.2d 364, 373.)

To meet the burden of affirmatively demonstrating error, the appellant must raise issues for review, and support each issue raised with argument, legal authority, and citations to the record. (*Niko v. Foreman, supra,* 144 Cal.App.4th 344, 367-368; *In re S.C.* (2006) 138 Cal.App.4th 396, 406.) California Rules of Court, rule 8.204(a)(1)(C) requires appellate briefs to include a citation to the record for any reference to a matter in the record. If the appellant fails to raise an issue, or fails to adequately support an issue raised, the appellate court may deem the issue waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 964 ["[Appellant] does not address its injunctive relief claim and therefore has waived any claim of error"]; *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6 ["Issues not raised in an appellant's brief are deemed waived or abandoned"]; *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546 ["We are not required to search the record to ascertain whether it contains support for [appellant]'s contentions].)

The rule is the same when the standard of review is de novo: "Although our review of a summary judgment is de novo, it is limited to issues which have been adequately raised and supported in plaintiffs' brief." (*Reyes v. Kosha, supra,* 65

Cal.App.4th at p. 466, fn. 6; see Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2007) ¶ 8:17.2, p. 8-6 (rev. # 1, 2007).

II. *Fraud Cause of Action: Damages*

In the second amended complaint, Sole Energy Corporation alleged damages of $112,690,000 representing the amount it would have made in profits if the transaction for the purchase of HBOC had been consummated.[3] In the motion for summary judgment, Defendants asserted the lack of a causal relationship between the alleged fraud and Plaintiffs' claimed damages, and the claimed damages were speculative. The order granting summary judgment states, "there is no causal connection between the alleged breach and plaintiff Sole [Energy] Corporation's alleged damages."

Plaintiffs argue in their opening brief, "[t]here is a clear cause and effect relationship between Plaintiffs' inducement to enter into the binding 'No Shop' and 'Non-Disclosure' provisions of the Letter of Intent and the damages that Plaintiffs suffered. Had Hodges, Kaymor, Nevadacor and Silverman abided by the Letter of Intent and neither shopped nor disclosed it to Petrominerals, then presumably the Stock Purchase Agreement would have been entered into between the parties at the end of February or early March 2000." Plaintiffs cite neither authority nor evidence in the appellate record to support that argument. They cite no evidence supporting their claim of over $112 million in damages, do not explain how they derived that amount, and present no legal authority supporting a theory of recovery.

In their opening brief, Plaintiffs also argue they suffered damages because they "had an opportunity to invest in the Ocean Energy Project, which in retrospect could have earned them more than the deal contemplated by the parties." In support of that

[3] Plaintiffs' fraud cause of action is based on Hodges's statement that Petrominerals was not going to try to acquire HBOC because "'it's too expensive and there's a conflict of interest in doing that kind of transaction.'"

argument, Plaintiffs cite only to their memorandum of points and authorities in opposition to Defendants' motion for summary judgment. That memorandum does not cite to any evidence.

In the respondents' brief, Defendants argue Sole Energy Corporation cannot recover those lost profit damages because (1) "[t]here is no causal connection between the alleged fraud in inducing the plaintiffs to enter into the alleged binding provisions of the [letter of intent] and the claimed damages"; and (2) "the alleged damages are too remote, speculative or uncertain" in that "there is no way of knowing what the ultimate terms of the agreement would have been or even if there would have been an ultimate agreement." Plaintiffs' reply brief neither responds to those arguments or supplies citations to authority or the record, but states only "[t]he damages that resulted from Defendants' fraud were discussed at length on pages 29-30 of the Appellants' Opening Brief."

Plaintiffs' failure to cite to evidence in the record is particularly significant because the record is so large. We do not have to sort through the eight-volume clerk's transcript—including hundreds of pages of declarations, deposition transcripts, and exhibits—to try to find evidence raising a triable issue on damages. "When an appellant's brief makes no reference to the pages of the record where a point can be found, an appellate court need not search through the record in an effort to discover the point purportedly made." (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 406; see also *Colt v. Freedom Communications, Inc.* (2003) 109 Cal.App.4th 1551, 1560 ["No record reference is furnished for this statement, and we may thus ignore it"]; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra*, ¶ 9:36, p. 9-11 (rev. # 1, 2006).) The only record citation Plaintiffs provide on the issues of causation and damages is to a memorandum of points and authorities. That is not sufficient.

In addition, Plaintiffs cite no legal authority supporting their claim of damages. It is not our duty to come up with a theory and authority supporting Plaintiffs' claim for lost profit damages. "'This court is not inclined to act as counsel for . . . any appellant and furnish a legal argument as to how the trial court's rulings in this regard constituted an abuse of discretion.'" (*Niko v. Foreman, supra* 144 Cal.App.4th at p. 368.)

We conclude Plaintiffs have failed to meet their appellate burden of affirmatively demonstrating error on the issues of causation and damages. Since damage resulting from the fraud is an essential element of a fraud cause of action (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 173), we affirm summary judgment on the fraud cause of action.

III. *Breach of Contract Cause of Action: Damages*

In the breach of contract cause of action, Sole Energy Corporation alleged compensatory damages of $112,690,000 based on the profits it would have earned had the transaction to purchase HBOC's stock been consummated.

In moving for summary judgment, Defendants argued there is no causal connection between those damages and their alleged breaches of the letter of intent and the lost profit damages claimed by Sole Energy Corporation are speculative. Plaintiffs do not address the issue of breach of contract damages in their appellants' opening brief. In their respondents' brief, Defendants argue at length and with substantial citation to authority that there was no causal connection and the damages were speculative. Plaintiffs did not respond to those arguments in their reply brief. They presented no argument, evidence, or authority to support Sole Energy Corporation's claim for causation and damages for breach of contract, and therefore failed to meet their appellate burden of demonstrating error on these issues. (*In re S.C., supra,* 138 Cal.App.4th at p. 406; *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc., supra,* 109 Cal.App.4th at p. 964.)

Since an essential element of breach of contract is damages caused by the breach (*Vu v. California Commerce Club, Inc.* (1997) 58 Cal.App.4th 229, 233), we affirm summary judgment on the breach of contract cause of action.

DISPOSITION

The judgment is affirmed. Respondents to recover their costs incurred on appeal.

FYBEL, J.

WE CONCUR:

SILLS, P. J.

ARONSON, J.